

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

EXECUTIVE PULSE
11 E 4th St.
Erie, PA 16507

BUREAU OF INFORMATION
& TELECOMMUNICATIONS
700 GOVERNORS DRIVE
PIERRE, SD 57501

And

South Dakota Department of
Tourism and State Development
711 East Wells Avenue
Pierre, SD 57501-3369
Phone: 605-773-3301
Toll Free: 800-872-6190

Consultant Phone # 866-397-8573

(Hereinafter referred to as Consultant)

(Hereinafter referred to as the State)

The State hereby enters into this Contract for services with above Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. AGREEMENT TERM:

The Consultant's services under this Agreement shall commence on July 1, 2010 and end on June 30, 2011 unless sooner terminated pursuant to the terms hereof. The State shall have the option to extend this Agreement under the same terms and conditions, for two, one year terms.

2. THE CONSULTANT:

A. The Consultant will perform those services described below.

B. The Consultant will:

Phase I.	Intensive programming for the Event Planner
Phase II.	Standard and Customized Reports for Event Planner as well as modifications from Phase I. Company Linkage Feature. Status E-mails.
Phase III.	ACT data migration and any further change orders/additions to the system.

C. The Consultant's Employer Identification Number: N/A

D. The Consultant has affirmed that he/she is not a full-time State employee as per SDCL 3-12-47.

E. The Consultant agrees to provide services in compliance with the Americans With Disabilities Act of 1990.

3. THE RESPONSIBILITIES OF THE STATE:

- A. The State will make payment for services upon satisfactory completion of the services.
- B. Payment on this contract will be made upon satisfactory completion of work, receipt of an invoice, and an allowable processing time. The State will pay the Contractor \$45,000 for services outlined in this contract. Terms of payment are as follows:
 - 1. The Consultant shall submit an invoice detailing time to the State of South Dakota, requirements.
 - 2. The State will make payment for services upon satisfactory completion of services performed.
 - 3. For the period of July 1, 2010 and June 30, 2011 the State will make payment for satisfactory services.
- C. The State will not pay Consultant's expenses as a separate item.

4. INDEMNITY PROVISION:

The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

5. INSURANCE PROVISION: N/A

6. INDEPENDENT CONSULTANT:

While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota. As such, Consultant agrees not to use State equipment, supplies, and facilities unless otherwise agreed to.

7. REPORTING OF INJURY:

Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

8. TERMINATION PROVISION:

This Agreement may be terminated by either party hereto upon thirty (90) days written notice. If either party fails to perform its obligations under this or any other agreement between the parties, and such failure continues for a period of thirty (30) days after written notice to the defaulting party, the other party shall have the right to terminate this Agreement.

9. DEFAULT PROVISION:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

10. AMENDMENT PROVISION:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

11. CONTROLLING LAW PROVISION:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

12. COMPLIANCE WITH REGULATIONS:

The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

13. COMMUNICATION NOTICE REQUIREMENTS:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Ron Knecht on behalf of the State, and by Laith Wardi on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

14. SEVERABILITY PROVISION:

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

15. SUPERCESSION PROVISION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

16. IT STANDARDS:

Consultant warrants that the software developed or purchased for BIT will be in compliance with the BIT Standards for security, file naming conventions, executable module names, Job Control Language, systems software version and release levels, temporary work areas, executable program size, forms management, network access, tape management and job stream procedures prior to the installation and acceptance of the final project. BIT hardware and software standards can be found at <http://www.state.sd.us/bit/bitservices/standards/>.

17. CONFIDENTIALITY OF INFORMATION:

Both parties agree that all officers, agents, consultants and employees will not, at any time, either directly or indirectly, communicate to any person, firm, or corporation or public entity, in any manner whatsoever, any information concerning any matters affecting or relating to the business, records, or other business data of the State that may be obtained in the course of performing this Agreement. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

18. LIMITATIONS ON DAMAGES:

In no event shall the Contractor be liable for loss of good will, or for indirect, incidental, consequential or punitive damages arising from the state's use of the services of the Contractor, regardless of whether such claim arises in tort or in contract.

If the state's records or other data submitted for processing are lost or damaged as a result of any failure by the Contractor, its employees or agents to exercise reasonable care to prevent such loss or damages the Contractor's liability on account of such loss or damages shall not exceed the reasonable cost of reproducing such records or data. This limitation shall not apply in the event that the records or data cannot be reproduced at reasonable cost.

19. DISASTER RECOVERY:

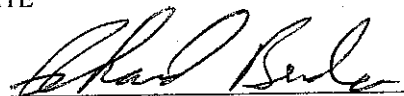
The Contractor will maintain a disaster recovery plan (the "Disaster Recovery Plan") with respect to the services provided to the State. For purposes of this Agreement, a "Disaster" shall mean any unplanned interruption of the operation or inaccessibility to the Contractor's service in which the Contractor, using a reasonable judgment, requires relocation of processing to a recovery location. The Contractor shall notify the State as soon as possible after the Contractor deems a service outage to be a Disaster. The Contractor shall move the processing of the State's services to a recovery location as expeditiously as possible and shall coordinate the cut-over. During a disaster, optional or on-request services shall be provided by the Contractor only to the extent adequate capacity exists at the recovery location and only after stabilizing the provision of base services.

20. AUDIT:

The State, at their expense and mutual agreement with the Contractor, can require a security audit and vulnerability assessment to provide third party verification of the Contractor's IT security safeguards for the system and its data.


In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 
Richard Benda

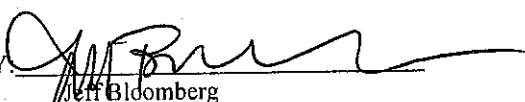
Department of Tourism & State Development
(Secretary)

11-11-10
(DATE)

BY: 
Otto Doll

Bureau of Information and Telecommunications
(Commissioner)

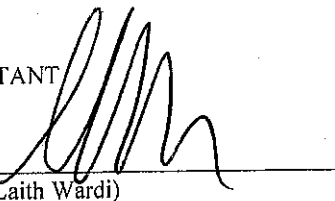
11-22-2010
(DATE)

BY: 
Jeff Blomberg

Bureau of Administration
(Commissioner)

11/17/10
(DATE)

CONSULTANT

BY: 
(Laith Wardi)

PRECIDAM - EXECUTIVE USE, INC.
(President)

11-9-10
(DATE)

- State Agency Coding (MSA Center) 0410040519
- State Agency MSA Company for which contract will be paid 1000 3016
- Object/subobject MSA account to which voucher will be coded 52041300 52060100
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract Ron Knecht, BIT, 773-4642 or Denise Luckhurst, 773-4653 or Mary Cerney, 773-5652.